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TO AMEMBASSY ROME IMMEDIATE

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FOR SULLIVAN-ICNAF DELEGATION

E.O. 11652: N/A

TAGS: EFIS, PFOR

SUBJECT: RESPONSE TO ICNAF QUESTIONS CONCERNING VALUE OF
INSPECTION SCHEME PROCEDURES

1. FOLLOWING IS ACCOMMODATION REACHED WITH JUSTICE AND
COMMERCE ON RESPONSE TO ICNAF INQUIRY. LANGUAGE WITH
RESPECT TO USE OF REPORTS IS TONED DOWN, BUT IS STILL
LEGALLY CORRECT. FEELING HERE IS THAT IT WOULD BE
DETRIMENTAL TO INDICATE THAT REPORT ITSELF CAN BE INTRODUCED
TO PROVE CONTENTS, I.E., TO PROVE THE OFFENSE. INSPECTORS
OR FISHERMEN RELYING ON SUCH A STATEMENT MIGHT BE SORELY
DISAPPOINTED. BELIEVE LANGUAGE IS TONED DOWN SUFFICIENTLY
NOT TO CAUSE PROBLEMS FOR DELEGATION.

Q.I. WHAT IS THE LEGAL VALUE OF THE STATEMENT BY AN INTER-
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NATIONAL INSPECTING OFFICER THAT A CERTAIN VESSEL AT A

CERTAIN TIME IN A CERTAIN LOCATION DID NOT ALLOW BOARDING TO TAKE PLACE? DOES IT HAVE TO BE CORROBORATED BY ONE WITNESS? BY TWO?

1. SUCH A "STATEMENT" MADE ORALLY IN COURT BY THE INSPECTING OFFICER FROM PERSONAL OBSERVATION WOULD BE ADMISSIBLE IN COURTS IN THE U.S. AND WOULD BE CONSIDERED BY THE FACT-FINDER ALONG WITH OTHER EVIDENCE IN ASSESSING WHETHER THE VESSEL REFUSED TO ALLOW BOARDING. THE STATEMENT WOULD

BE STRONGER EVIDENCE IF IT WERE CORROBORATED BY WITNESSES (AS MANY AS POSSIBLE) BUT IT IS NOT NECESSARY THAT SUCH CORROBORATION BE AVAILABLE FOR THE STATEMENT TO BE INTRODUCED. HOWEVER, IT SHOULD BE NOTED THAT SUCH A STATEMENT, EVEN IF CORROBORATED BY MANY WITNESSES WOULD NOT NECESSARILY BE DISPOSITIVE OF THE ISSUE. OUR LEGAL SYSTEM WORKS ON A BALANCE OF FACTS AND CREDIBILITY, AND THUS IT IS IMPORTANT TO PROVE VIOLATIONS AS COMPLETELY AS POSSIBLE UNDER THE CIRCUMSTANCES. A STATEMENT BY THE INSPECTOR SHOULD BE CORROBORATED BY OTHER EVIDENCE (SUCH AS PHOTOGRAPHS, LOGBOOKS, AND WITNESSES, ETC.) WHICH WOULD SHOW THAT THE INSPECTION SHIP WAS FLYING THE PROPER FLAG, THAT IT WAS CLOSE ENOUGH TO HAVE BEEN SEEN AND HEARD BY THE VIOLATING VESSEL, THAT IT WAS SEEN AND HEARD BY THE FISHING VESSEL, THAT THE PROPER SIGNALS WERE GIVEN TO ASK TO COME ABOARD, AND SO FORTH. THIS TYPE OF CORROBORATING EVIDENCE WOULD BE IMPORTANT IN TERMS OF FINDING A VIOLATION. IT SHOULD BE NOTED THAT WITNESSES CAN PROVIDE THIS TYPE OF EVIDENCE--FOR INSTANCE A CREW MEMBER ON THE INSPECTION VESSEL MIGHT TESTIFY THAT HE SAW A MAN ON DECK ON THE FISHING VESSEL, WHO LOOKED AT THE INSPECTION VESSEL (WHICH HAD ITS BOARDING FLAG UP), AND THEN WENT BELOW. THIS WOULD TEND TO SHOW THAT AT LEAST THE CREW OF THE FISHING VESSEL KNEW A BOARDING WAS BEING ATTEMPTED.

2. ONE OF THE PROBLEMS IN PROSECUTION OF BOARDING VIOLATIONS IS THE CONTENTION, ON THE PART OF THE FISHING VESSEL, THAT THE CAPTAIN WAS NOT AWARE THAT THE BOARDING HAD BEEN ATTEMPTED, AND THEREFORE THAT THE VESSEL CANNOT LIMITED OFFICIAL USE

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BE CHARGED. IT MIGHT BE NOTED THAT IN THE CONTEXT OF OUR LEGAL SYSTEM, THIS PROBLEM COULD BE MITIGATED IF LEGAL RESPONSIBILITY WERE PUT ON THE CAPTAIN TO KNOW WHEN A BOARDING FLAG IS SIGHTED OR A BOARDING ATTEMPT BECOMES KNOWN BY HIS CREW. AN EVEN MORE FAR-REACHING SOLUTION WOULD PLACE A FURTHER DUTY ON THE CAPTAIN TO HAVE A RADIO MONITORED OR SOMEONE ON WATCH AT ALL TIMES SO THAT AN ATTEMPTED BOARDING WOULD BE RECOGNIZED BY THE

VESSEL.

3. SUCH A "STATEMENT" BY AN INSPECTING OFFICER IN WRITTEN FORM WOULD BE TREATED IN THE SAME MANNER AS THE REPORT OF THE INSPECTING OFFICER (SEE ANSWER TO QUESTION II BELOW).

4. THE WRITTEN STATEMENT BY AN INSPECTION OFFICER THAT A VESSEL REFUSED TO ALLOW BOARDING WOULD ALSO HAVE THE LEGAL VALUE OUT OF COURT OF SERVING AS GROUNDS FOR THE ISSUANCE OF A WARRANT FOR THE ARREST OF THE VIOLATING

VESSEL AND OR MASTER. THE INSPECTING OFFICER HIMSELF COULD MAKE OUT A COMPLAINT AGAINST THE VIOLATOR, THEREIN ALLEGING THE REFUSAL TO ALLOW BOARDING. OR, SOME OTHER KNOWLEDGEABLE U.S. OFFICIAL COULD MAKE OUT A COMPLAINT ALLEGING THE SAME FACTS AND USING THE INSPECTING OFFICER'S STATEMENT, IN THE FORM OF AN AFFIDAVIT, TO SUPPORT HIS COMPLAINT.

5. THE REPORT OF THE INSPECTING OFFICER CONCERNING THE VIOLATION COULD LIKEWISE SERVE AS AN AFFIDAVIT IN SUPPORT OF SUCH A COMPLAINT.

Q.II. WHAT IS THE LEGAL VALUE OF THE REPORT PROPERLY WITNESSED AND RELATED DOCUMENTS PROPERLY CERTIFIED? HOW SHOULD IT BE WITNESSED? HOW SHOULD THEY BE CERTIFIED?

1. AN INSPECTOR'S REPORT COULD BE INTRODUCED IN A U.S. COURT IN CONJUNCTION WITH THE TESTIMONY OF THE INSPECTING OFFICER CONCERNING THE VIOLATION AND OTHER FACTS WHICH HE WITNESSED. IN THIS CONNECTION, THE REPORT WOULD BE USED BY THE INSPECTING OFFICER TO REFRESH HIS MEMORY ON THE WITNESS STAND. THE OFFICER WOULD, OF COURSE, LIMITED OFFICIAL USE

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TESTIFY AS TO THE AUTHENTICITY OF THE REPORT. ALTHOUGH THE REPORT DOES NOT HAVE TO BE WITNESSED, STATEMENTS OR SIGNATURES OF WITNESSES MIGHT BE ADVISABLE IN ORDER TO HAVE THE NAMES OF THOSE WITNESSES FOR TESTIMONY, IMPEACHMENT OR OTHER PURPOSES. AN INSPECTOR'S REPORT COULD ALSO BE INTRODUCED FOR PURPOSES OF IMPEACHMENT OF THE AUTHOR OF THE REPORT, OR FOR OTHER LIMITED PURPOSES SUCH AS TO PROVE A REPORT WAS MADE. HOWEVER, THE REPORT ALONE COULD NOT BE USED AS PROOF OF THE OFFENSE. IN THIS CONNECTION, IT SHOULD BE NOTED THAT THE U.S. CONSTITUTION PROVIDES FOR A BASIC RIGHT OF CONFRONTATION OF ONE'S ACCUSERS.

2. AS PREVIOUSLY STATED IN RESPONSE TO THE FIRST QUESTION, THE INSPECTING OFFICER'S REPORT COULD ALSO SERVE AS A

SUPPORTING AFFIDAVIT TO A COMPLAINT ALLEGING A VIOLATION
OF THE NORTHWEST ATLANTIC FISHERIES ACT OF 1950, THE U.S.
LEGISLATION IMPLEMENTING ICNAF. CERTIFICATION OF THE
REPORT AND THE STATEMENTS AND SIGNATURES OF WITNESSES
TO THE PREPARATION OF THE REPORT WOULD STRENGTHEN THE
VALUE OF THE REPORT AS A SUPPORTING AFFIDAVIT, BUT WOULD
NOT BE REQUIRED.

3. CERTAIN ATTACHMENTS TO THE REPORT--SUCH AS PHOTOGRAPHS
OF FISHING GEAR OR THE VESSEL'S CATCH--COULD BE ENTERED
INTO EVIDENCE AS EXHIBITS; BUT ONLY IF "AUTHENTICATED."
INTO EVIDENCE AS EXHIBITS; BUT ONLY IF "AUTHENTICATION"

CERTIFICATION IS NOT A PROCEDURE NORMALLY USED WITH SUCH

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